Supreme Court of the United States

OCTOBER TERM, 1940

ATANASIO SITCHON,
Petitioner,
vs.
AMERICAN EXPORT LINES, INC.,
Respondent.
No. .....

Brief in Support of Petition for Writ of Certiorari.

The jurisdictional basis for the petition, a statement of the case, and the opinions of the courts below, are all stated in the petition, and, therefore, need not be repeated here.

Specification of Errors.

1. The decision of the Circuit Court of Appeals for the Second Circuit conflicts with opinions of this Court, and of other Circuit Courts of Appeal, in holding that a seaman is bound by a release of present and future injuries executed on the faith of a physician's report that he did not have the very injury which, after the release, he found himself to be suffering from.

Summary of Argument.

Where a seaman, claiming for personal injuries, is assured by a marine hospital physician that he has no skull fracture, and that a sedative and short rest will permit him to return to work and the doctor's report is before the seaman and employer during negotiations for a settlement of a personal injury claim, it is clear that that report is the basis of the settlement; that the seaman, if advised that he had a skull fracture and brain injury resulting in permanent physical impairment, would not have settled his claim on the basis of minor bruises. Therefore, the release executed by the seaman, no matter how comprehensive in form, must be taken to exclude skull fracture and brain injury. Where, then, the seaman subsequently discovers that the doctor's report was wrong, that he actually had a skull fracture and brain injury, the release must be set aside; any other result would be inequitable.

ARGUMENT.

I.

The principle for which petitioner contends was upheld by this Court in *Texas & Pacific Railway Co.* v. *Dashiell,* 198 U. S. 521. There, an injured railway employee who thought he had received slight bodily injuries and a scalp wound, executed a release to the company "from and against all claims, demands, damages and liabilities, of and from every kind or character whatsoever, for or on account of the injuries sustained by me in the manner or upon the action aforesaid, and arising or accruing, or hereafter arising or accruing in any way therefrom".

The release in that case specified the injuries which the employee had received. While it is true that in that

case this court stressed the words "for or on account of the injuries sustained", and held that they related to the specification of injuries embodied in the release, that case does stand for the proposition that for even a unilateral mistake a release may be rescinded where an unjust result would otherwise ensue.

In the case at bar, the erroneous hospital report was before plaintiff and defendant. The release executed by plaintiff impliedly recited the findings of the hospital. The result in *Texas* v. *Dashiell* (*supra*) would have been the same had the specification of injuries been contained in a separate letter. In the case at bar, if the erroneous hospital report had been physically incorporated in the release, the result would be the same as in the case cited—the release would have to be set aside. Therefore, in the case at bar, we must consider the broad wording of the release as limited by the contents of the hospital report; we must conclude that both plaintiff and defendant acted upon the assumption that no skull injury was or could be present. A skull injury is not a possible development from a minor injury. It is there at the time of the accident, or it can never result therefrom. A statement that there is no skull injury is a representation of an existing fact, and not a prognosis. The terrible mistake made by the hospital actually deceived both plaintiff and defendant. That deception, innocent though it was, caused this plaintiff to settle his claim for $180.

This erroneous hospital report must, then, be taken as part of the release, and this case comes squarely within the principle of the case cited.

The *Texas* v. *Dashiell* case (*supra*) applies whether we consider this case as one of mutual or unilateral mistake.

The subject of rescission of releases for unilateral mistake is discussed in Clark on Equity, Section 372; Williston on Contracts, Section 1540; and is thus stated in *Rosenblum* v. *Manufacturer's Trust Co.*, 270 N. Y. 79, at pages 84-5:

"The term 'mistake' may be used to cover all kinds of mental error, however induced * * *, and equity can interfere in a suit for cancellation or rescission to prevent the enforcement of an unjust agreement induced by a unilateral mistake of fact. A mistake not mutual but only on one side may be ground for rescinding but not for reforming a contract. (*Smith* v. *Mackin*, 4 Lans. 41, 44, 45; *Moffett, Hodgkins & Clarke Co.* v. *Rochester*, 178 U. S. 373.) If the erroneous transaction was such as to involve the act of the plaintiff only and the effect of the transaction would be the unjust enrichment of the defendant, the plaintiff is entitled to have the transaction rescinded, although he was the only party mistaken."

II.

The decision of the Circuit Court of Appeals is in conflict with its own prior decision. In the case of *Bonici* v. *Standard Oil Co.*, 103 Fed. (2) 437, where a seaman had given a release for personal injuries (similar in form to the release in the case at bar) it appeared that he had relied upon the advice of a physician which, though honestly made, was erroneous. The physician in that case was procured by the employer. The release was set aside.

In the instant case, the Circuit Court of Appeals, in reaching a contrary result, attempted to distinguish the *Bonici* case in two respects:

1. The physician in the case at bar was the plaintiff's physician.

2. Plaintiff was represented by an attorney in negotiating the settlement.

It is submitted that these so-called distinctions are erroneous and that the principle which applied to the *Bonici* case applies with equal force to the case at bar.

In the *Bonici* case the seaman relied upon a diagnosis honestly but erroneously made. His injuries were far more serious than the diagnosis showed. That release was set aside. Why? Because it would be inequitable to bar the seaman from recovering for his real injuries unknown to him at the time, and regarding which his suspicions, if any, were allayed by the physician's report. In the instant case the seaman was likewise misled, although innocently, by a physician's report. The report this time was not made by the employer's physician. It was not, however, made by plaintiff's physician as the Circuit Court of Appeals argued; it was not made by a physician of plaintiff's choosing, but by a doctor in a medical institution to which plaintiff was sent upon completion of his voyage. That incorrect report led to an inequitable result. Plaintiff, at the time he executed his release, was actually and permanently disabled through a skull and brain injury. He was assured by a hospital physician that the X-ray showed no fracture. His fears as to the extent of his injuries being thus removed, he settled his case for $180.

There is nothing in these simple facts to justify withholding relief from this plaintiff. Any other result would be grossly inequitable. True, the doctor involved did not represent the respondent as he did in the *Bonici* case. That is a distinction without a difference. The cases are in fact identical because in both the injured seaman was misled by a doctor's report. The principle of equity which applied to the *Bonici* case applies equally to the case at bar.

But, the Circuit Court of Appeals says, plaintiff was represented by a lawyer when he negotiated the settlement. So he was. The lawyer, however, was not a physician. He knew no more of the real extent of the injuries

than his client. To the lawyer, as well as the client, the hospital report meant that there was no sign of a skull fracture. The presence of the lawyer upon the execution of the release would be of importance only if there were a claim of misrepresentation or overreaching by respondent. No such claim is made. The presence of the lawyer, therefore, creates no distinguishing feature between the *Bonici* case and the case at bar.

To hold in the case at bar that petitioner did not care whether the doctor was right or wrong as to the skull fracture, would be contrary to ordinary human actions. To say as a matter of law that he is presumed not to have cared, is a monstrous proposition.

III.

The decision of the Circuit Court of Appeals is in direct conflict with the decisions in other Circuits.

In the case of *Tulsa City Line, Inc.* v. *Mains,* 107 Fed. (2) 377 (C. C. A. Tenth Circuit) a release similar to the one in the case at bar was executed, plaintiff acting upon statements both by his physician and defendant's that the injuries were slight. The Court there held that despite the broad language of the release, only minor injuries were in the minds of the parties, and that with respect to the fact that plaintiff had the advice of her own physician as well as the advice of defendant's physician, it was immaterial from what source the information came which induced the mistake. It is significant that in that case, also, the plaintiff was represented by an attorney in negotiating the settlement.

In *Great Northern Railway Co.* v. *Reid,* 245 Fed. 86 (C. C. A. Ninth Circuit), a railway employee released what he thought was a claim for trifling injuries, for $10.

The release did not specify the injuries, but was general in its terms, and covered present and future demands. The employee had been examined by the company's physician. His injuries later proved to be serious. After commenting upon the fact that the release was in form "as broad as it could be made" that court said (245 Fed. at p. 89):

> "In such a release, however, the general language will be held not to include a particular injury, then unknown to both parties, of a character so serious as clearly to indicate that, if it had been known, the release would not have been signed. This was a conclusion reached in *Lumley* v. *Wabash Railway Co.* (C. C. A. Sixth Circuit), 76 Fed. 66."

The case at bar is stronger than any of the cases cited because here petitioner (and respondent) not only had no thought of a skull fracture and permanent brain injury in mind in executing the release, but had been definitely assured by a physician that no such injury existed. It makes for no legal difference, as the *Tulsa* case (*supra*) pointed out, what physician made the mistake.

Conclusion.

It is respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers in order that the law on this important question may be definitely settled and that uniformity of decision between the Circuit Courts be established, and to that end that a Writ of Certiorari be granted.

Respectfully submitted,

WILLIAM MACY,
Counsel for Petitioner.